

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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|------------------------|---|----------------------------|
| BILLY KEITH EVANS | § | |
| v. | § | CIVIL ACTION NO. 6:08cv136 |
| MAXEY CERLIANO, ET AL. | § | |

MEMORANDUM OPINION AND PARTIAL ORDER OF DISMISSAL

The Plaintiff Billy Keith Evans, a former inmate of the Gregg County Jail proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining that his constitutional rights were violated during his confinement in the jail. The parties have consented to allow the undersigned United States Magistrate Judge to enter final judgment in the proceeding pursuant to 28 U.S.C. §636(c).

An evidentiary hearing was conducted on December 4, 2008. Following this hearing, on December 22, 2008, Evans filed a motion to dismiss one of the Defendants, Lt. Bill Jennings, saying that he believed that Jennings had been involved in the incident forming the basis of the lawsuit, but that he has since learned that it was another individual and not Jennings. Rule 41(a), Fed. R. Civ. P., permits plaintiffs to dismiss their actions without need for leave of court by either filing a notice of dismissal prior to service of a responsive pleading or by filing a stipulation of dismissal signed by all parties. Rule 41(a)(2), Fed. R. Civ. P., states that except as provided in Rule 41(a)(1), an action shall not be dismissed at the plaintiff's instance except upon order of court and upon such terms as the court deems proper.

The Court has reviewed Evans' motion to dismiss Lt. Jennings from the lawsuit and has determined that it is meritorious. It is accordingly

ORDERED that the Plaintiff's motion to dismiss Lt. Jennings from the lawsuit, filed December 22, 2008 (docket no. 53) is GRANTED. It is further

ORDERED that the Plaintiff's claims against Lt. Jennings are hereby DISMISSED without prejudice and that Lt. Jennings is DISMISSED as a party to this lawsuit. The dismissal of the claims against Lt. Jennings shall have no effect upon the remaining claims and defendants in the lawsuit.

So **ORDERED** and **SIGNED** this **20** day of **January, 2009**.


JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE